IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 29539 of 2006(N)

PETITIONER:

BABU.C.GEORGE, AGED 60 YEARS,
SON OF LATE SRI.P.G.GEORGE,RESIDING AT
CHANDRATHIL HOUSE, PALARIVATTOM P.O.,
KOCHI-688 025.

BY ADV. SRI.N.J.MATHEWS
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:

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1. THE ASST.COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-1, THARAKKANDOM ESTATE,
BANERJI ROAD, KOCHI-688 018.

2. STATE BANK OF TRAVANCORE,
PALARIVATTOM BRANCH, KOCHI-682 025
REPRESENTED BY ITS CHIEF MANAGER.

3. STATE BANK OF TRAVANCORE,
OVERSEAS BRANCH CIVIL LINES ROAD,
PALARIVATTOM, KOCHI-25, REPRESENTED BY ITS
CHIEF MANAGER.

4. UNION BANK OF INDIA,
ERNAKULAM MAIN BRANCH,
ERNAKULAM, KOCHI-25, REPRESENTED BY ITS
CHIEF MANAGER.

R4 BY ADV. SRI.K.S.AJAYAGHOSH
R1 SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT
SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE TAX DEMANDS AND PAYMENTS.

P2: CERTIFIED COPY OF THE NOTICE ISSUED U/S.222(3) OF THE I.T. ACT.

P3: TRUE COPY OF LETTER ISSUED BY R2.

P4: TRUE COPY OF LETTER ISSUED BY R3.

P5: TRUE COPY OF LETTER ISSUED BY R4.

RESPONDENT'S EXHIBITS:

R1A: TRUE COPY OF LIST OF DEMANDS SHOWING THE CORRECT DEMANDS OF THE ENTIRE GROUP.

R1B: TRUE COPY OF ACKNOWLEDGEMENT.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.29539 of 2006

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Dated this the 13th day of June, 2007.

JUDGMENT

Heard counsel for the petitioner, Standing Counsel for Income Tax Department and counsel for 4th respondent. Pending second appeal before the Tribunal against assessments, the Income Tax Department has recovered arrears of tax in Garnishee proceedings issued under Section 226(3) of the Income Tax Act. Even though counsel for the petitioner contended that copies of Garnishee notices were not issued to the petitioner and he has relied on two decisions of the Punjab and Haryana High Court, in ATMA TUBE PRODUCTS LTD. V. UNION OF INDIA AND OTHERS (222 I.T.R. 720) and in MOHAN SINGH V. COMMISSIONER OF INCOME TAX AND ANOTHER (204 ITR 570) in support of the same, I find the decisions talk about requirement of issuing demand notices prior to initiation of recovery proceedings. Admittedly petitioner was served with assessment orders and demand notices and he has contested the demands in appeal. Since no stay orders were issued, the Department was free to recover the tax. However, since tax is recovered during pendency of appeals, the petitioner's protest is self-evident. If refund is ordered,

Department should not delay the same. The Tribunal is directed to expedite hearing of appeals. The W.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

pms